

The House Committee on Judiciary offers the following substitute to SB 427:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the
2 "Public Retirement Systems Investment Authority Law," so as to define certain terms; to
3 provide that certain public retirement systems may invest retirement system assets in certain
4 types of alternative investments, private placements, and other private investments; to
5 provide that such investments may be made up to a certain amount; to shield information
6 related to such investment from public scrutiny; to provide for a code of ethics; to amend
7 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
8 disclosure of records is not required and disclosure exempting legal authority, so as to
9 exempt certain public records from public inspection; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public
14 Retirement Systems Investment Authority Law," is amended by inserting at the end thereof
15 a new Code section to read as follows:

16 "47-20-87.

17 (a) As used in this Code section, the term:

18 (1) 'Alternative investments' means the following investments:

19 (A) Privately placed investment pools, including, without limitation, private investment
20 funds, such as:

21 (i) Leveraged buyout funds;

22 (ii) Mezzanine funds;

23 (iii) Workout funds;

24 (iv) Debt funds;

25 (v) Venture capital funds;

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1 (vi) Merchant banking funds; and

2 (vii) Funds of funds and secondary funds

3 that include investments in privately placed investment pools described in this
4 subparagraph, in each case whether structured as a partnership, limited liability
5 company, trust, corporation, joint venture, or other entity or investment vehicle of any
6 type; organized or operating in one of the states or territories of the United States or
7 outside the United States; such pool will invest in the United States or outside the
8 United States or any combination thereof; or such pool makes investments of the type
9 described in subparagraph (B) of this paragraph or other investments of any type or any
10 combination thereof;

11 (B) Private placements and other private investments, including without limitation:

12 (i) Leveraged buyouts;

13 (ii) Venture capital investment;

14 (iii) Equity investments, including, without limitation, preferred and common stock;

15 (iv) Warrants;

16 (v) Options;

17 (vi) Private investments in public securities;

18 (vii) Recapitalizations;

19 (viii) Privatizations;

20 (ix) Mezzanine debt investments;

21 (x) Distressed debt and equity investments, including, without limitation, cases in
22 which the investor may take control of the issuer;

23 (xi) Other debt investments, whether secured or unsecured, senior or subordinated,
24 recourse or nonrecourse, convertible, or otherwise;

25 (xii) Convertible securities;

26 (xiii) Receivables;

27 (xiv) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the
28 United States Code;

29 (xv) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the
30 United States Code;

31 (xvi) Debt and equity derivative instruments of all types; and

32 (xvii) All other debt and equity private placements of all types, in each case whether
33 issued by a partnership, limited liability company, trust, corporation, joint venture, or
34 other entity or vehicle of any type or whether the issuer is organized or does business
35 in one of the states or territories of the United States or outside the United States; and

1 (C) Any distribution in kind received by an eligible large retirement system in
2 connection with any investment described in subparagraphs (A) and (B) of this
3 paragraph.

4 (2) 'Eligible large retirement system' shall be a large retirement system as defined in
5 subsection (a) of Code Section 47-20-84; provided, however, that such term shall not
6 include the Teachers Retirement System of Georgia.

7 (b) In addition to the eligible investments authorized by Code Section 47-20-82, and
8 without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,
9 an eligible large retirement system is authorized to invest in alternative investments in
10 accordance with the provisions of this Code section. Further, when provisions of Code
11 Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section
12 limit a particular form of investment to a certain percentage of retirement system assets, the
13 denominator will include alternative investments with all other investments, but the
14 numerator for any such calculation will not include any alternative investments, even if any
15 such alternative investment is of a like kind as the investments that are included in the
16 numerator.

17 (c) An alternative investment may not exceed in any case 20 percent of the aggregate
18 amount of:

19 (1) The capital to be invested in the applicable private pool, including all parallel pools
20 and other related investment vehicles established as part of the investment program of the
21 applicable private pool; and

22 (2) The securities being issued in the applicable private placement, in each case
23 determined at the time such alternative investment is initially either made or committed
24 to be made, as applicable, but taking into consideration any investments that have
25 previously been or are concurrently being made or committed to be made.

26 Each alternative investment by an eligible large retirement system shall have previously
27 been or shall be concurrently made or committed to be made by at least four other investors
28 not affiliated with the issuer. Such four other investors shall be investing on substantially
29 the same terms and conditions as those applicable to the investment by the eligible large
30 retirement system to the extent such other investors are similarly situated with the eligible
31 large retirement system. Alternative investments shall only be made in private pools and
32 issuers that have at least \$100 million in assets, including committed capital, at the time the
33 investment is initially made or committed to be made by an eligible large retirement system.

34 (d) Alternative investments by an eligible large retirement system may not in the aggregate
35 exceed 5 percent of the retirement system assets at any time. The board of trustees of an
36 eligible large retirement system shall have the discretion to designate whether any

1 investment that is permitted to be made as an alternative investment pursuant to this Code
2 section and is also permitted to be made as an investment pursuant to Code Section
3 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an
4 alternative investment made pursuant to this Code section or as an investment made
5 pursuant to Code Section 47-20-83. If the eligible large retirement system is not in
6 compliance with the limitations imposed by this subsection, it shall make a good faith effort
7 to come into compliance within two years and in any event as soon as practicable
8 thereafter; provided, however, that during any period of noncompliance the eligible large
9 retirement system shall not increase the percentage of its assets committed to be invested
10 in alternative investments but shall be permitted during such period to continue to make
11 investments as required by the then existing commitments of the eligible large retirement
12 system to alternative investments made before the period of noncompliance.

13 (e) The provisions of this subsection shall apply only to the Employees' Retirement System
14 of Georgia. New commitments to alternative investments may not in the aggregate exceed
15 1 percent of the retirement system assets in any calendar year until the first occurrence that
16 4 1/2 percent of the retirement system assets are invested in alternative investments, at
17 which time there shall be no limit on the percentage of commitments that may be made in
18 any calendar year, subject to compliance with the other provisions of this Code section.

19 (f)(1) For purposes of this subsection, the term 'information' shall include, without
20 limitation, preinvestment and postinvestment diligence information, including reviews
21 and analyses prepared or provided by the issuer of a potential or actual alternative
22 investment or prepared by or for an eligible large retirement system or otherwise relating
23 to a potential or actual alternative investment.

24 (2) In addition to those records that are exempted from being open to inspection by the
25 general public under Code Section 47-1-14 and except as otherwise provided in this
26 subsection, an eligible large retirement system may in its discretion treat as confidential
27 and withhold from public inspection and disclosure all information prepared or provided
28 by the issuer of a potential or actual alternative investment or prepared by or for an
29 eligible large retirement system or otherwise relating to a potential or actual alternative
30 investment and held by an eligible large retirement system and may agree in making an
31 alternative investment to treat such information as confidential and withhold it from
32 public inspection and disclosure.

33 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, an
34 eligible large retirement system shall make publicly available the following information,
35 but only to the extent the following information is otherwise available or maintained by

1 said eligible large retirement system in the normal course and only after a period of one
2 year from the date such records were created:

3 (A) The name of any alternative investment in which the eligible large retirement
4 system has invested; excluding, in the case of an alternative investment in a privately
5 placed investment pool, any information concerning the investments made by such
6 privately placed investment pool;

7 (B) The date the eligible large retirement system first invested in an alternative
8 investment described in paragraph (1) of this subsection;

9 (C) The aggregate amount of money, expressed in dollars, the eligible large retirement
10 system has invested in alternative investments as of the end of any fiscal quarter;

11 (D) The aggregate amount of money and the value of any in kind or other distribution,
12 in each case, expressed in dollars, the large retirement system received from alternative
13 investments;

14 (E) The internal rate of return or the result under any other such standard used by the
15 eligible large retirement system in connection with alternative investments for the asset
16 class and for the period for which the return or standard was calculated; and

17 (F) The remaining cost of alternative investments in which the eligible large retirement
18 system has invested as of the end of any fiscal quarter.

19 (4) The provisions of this Code section shall not restrict access to information and
20 records under process of law or by officers otherwise entitled to them for official
21 purposes, but such information and records shall have the same confidential status under
22 process or with such officers as it does in the hands of an eligible large retirement system,
23 and such officers shall respect such confidentiality to the extent consistent with their
24 separate powers and duties.

25 (5) On the third Monday in January of each year, the director of each large retirement
26 system shall provide a report to the Governor and the chairpersons of the House and
27 Senate standing committees on retirement detailing the performance of the investments
28 made pursuant to this Code section including, without limitation, a clear statement of the
29 aggregate loss or profit on such investments for the preceding year. This paragraph shall
30 not be construed so as to require the disclosure of any information otherwise protected
31 by this subsection.

32 (g) Unless the information has been publicly released, preinvestment and postinvestment
33 diligence information, including reviews and analyses, prepared or maintained by the large
34 retirement system or by an alternative investment firm is confidential and exempted from
35 being open to inspection by the general public pursuant to Article 4 of Chapter 18 of Title

1 50, except to the extent it is subject to disclosure from the requirements of subsection (f)
2 of this Code section.

3 (h) The respective boards of trustees of eligible large retirement systems making
4 investments authorized by this Code section shall adopt a code of ethics for the
5 consideration of and investment in and disposition of alternative investments.

6 (i) Funds invested pursuant to this Code section and any return on such investment shall
7 remain funds of the retirement system."

8 **SECTION 2.**

9 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
10 disclosure of records is not required and disclosure of exempting legal authority, is amended
11 by striking the word "or" at the end of paragraph (18) of subsection (a), by striking the period
12 at the end of paragraph (19) of subsection (a) and inserting in lieu thereof the symbol and
13 word "; or", and by inserting at the end of subsection (a) the following:

14 "(20) Records that are expressly exempt from public inspection pursuant to Code Sections
15 47-1-14 and 47-20-87."

17 **SECTION 3.**

18 All laws and parts of laws in conflict with this Act are repealed.